



STATE OF NEW JERSEY

In the Matter of Claudia Nina,
Clerk 2, Bilingual in Spanish and
English (PC1714T), Hudson County

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

CSC Docket No. 2018-3191

Bypass Appeal

ISSUED: NOVEMBER 23, 2018 (JET)

Claudia Nina appeals the bypass of her name on the Clerk 2, Bilingual in Spanish and English (PC1714T), Hudson County, eligible list.

The appellant took the promotional examination for Clerk 2, Bilingual in Spanish and English (PC1714T), achieved a passing score, and was ranked on the subsequent eligible list. The appellant’s name was certified on February 12, 2018 (PL180193). In disposing of the certification, the appointing authority bypassed the appellant, who was tied as the number one ranked eligible on the certification, and recorded her as “Bypassed, unsatisfactory employment record.”¹ The appointing authority appointed lower ranked candidates, Joyce Quintanilla and Elizabeth Vargas, who were tied as the third ranked candidates on the certification, and Doralba Diaz, who was tied as the fifth ranked candidate on the certification, effective April 16, 2018. It is noted that the PC1714T list was certified three times and eight appointments were made.²

On appeal to the Civil Service Commission (Commission), the appellant asserts, among other things, that she was improperly bypassed despite that she maintained interest in the position. The appellant explains that she was the only individual who was not appointed from the PL180193 certification, and the

¹ This agency’s records reflect that the appellant’s disciplinary history includes a five working day suspension effective December 17, 2014, and a 45 working day suspension effective May 18, 2015.

² The appellant’s name also appeared on the PL151409 and the PL151410 certifications. The PL151409 certification was cancelled effective December 28, 2015. It is noted that the appellant was listed on the PL151410 certification as “Retained, Interested others appointed.”

appointing authority informed her that she was denied the promotion as a result of her disciplinary history. The appellant contends that the appointing authority is now unfairly denying her a promotional opportunity as her disciplinary incidents occurred three years ago, which shows that she has been discriminated against and subjected to retaliation. Moreover, it appears that the appellant is arguing that she was also improperly bypassed on the PL151410 certification.

In support, the appellant provides a letter of recommendation dated September 23, 2008 from Robert B. Knapp, Deputy Director, Hudson County Department of Family Services/Welfare Division; an e-mail dated March 26, 2018 from Knapp, which indicates that the appellant was not selected as a result of her disciplinary history, and a letter dated January 8, 2016 expressing her interest in the subject position.

Despite being provided with the opportunity, the appointing authority did not provide a response.

CONCLUSION

N.J.S.A. 11A:4-8, *N.J.S.A.* 11A:5-7, and *N.J.A.C.* 4A:4-4.8(a)3ii (known as the Rule of Three) allow an appointing authority to select any of the top three interested eligibles from a promotional list, provided that a veteran does not head the list. As long as that discretion is properly utilized, an appointing authority's discretion will not be overturned. *N.J.A.C.* 4A:2-1.4(c) provides that the appellant has the burden of proof to show by a preponderance of the evidence that an appointing authority's decision to bypass the appellant on an eligible list was improper.

In cases of this nature where dual motives are asserted for an employer's actions, an analysis of the competing justifications to ascertain the actual reason underlying the actions is warranted. See *Jamison v. Rockaway Township Board of Education*, 242 *N.J. Super.* 436 (App. Div. 1990). In *Jamison*, *supra* at 436, 445, the Court outlined the burden of proof necessary to establish discriminatory and retaliatory motivation in employment matters. Specifically, the initial burden of proof in such a case rests on the complainant who must establish retaliation by a preponderance of the evidence. Once a *prima facie* case showing has been made, the burden of going forward, but not the burden of persuasion, shifts to the employer to articulate a legitimate non-retaliatory reason for the decision. For the reasons set forth below, the appellant has not presented a *prima facie* case in this matter.

In this matter, the appellant has provided no substantial evidence to show that the bypass was improper. Initially, the appointing authority provided a legitimate basis for not selecting the appellant, as a review of this agency's records reveal that the appellant's personnel file contains a 2014 five working day

suspension and a 2015 45 working day suspension. Her 45 working day suspension, which is a major disciplinary action, occurred less than three years prior to when her name was certified on the PL180193 certification. An appointing authority has the discretion to dispose of a certification within the guidelines of Title 11A of the New Jersey Statutes Annotated and Title 4A of the New Jersey Administrative Code. This discretion includes utilizing each candidate's history and qualifications to determine the best candidate from a list of three eligibles, any of whom may be selected under *N.J.A.C. 4A:4-4.8(a)3*. In this regard, it is clear that the appellant's disciplinary history could be considered in determining whether she could be bypassed on the subject list. See e.g., *In the Matter of Andrew Ross, Correction Sergeant, Department of Corrections (PS7099I)* (MSB, decided January 17, 2001) (Sufficient basis for bypass on Correction Sergeant list for employee with numerous remote minor disciplinary actions and several more recent criminal complaints); *In the Matter of Sherree K. Culvert, Correction Lieutenant, Department of Corrections (PS6320I)* (MSB, decided October 11, 2000) (Sufficient basis for bypass on Correction Lieutenant list for employee with 20 minor disciplinary infractions, including three very recent infractions); *In the Matter of Gary R. Kern, Antonio C. Campos, Larry W. Cole and Robert M. Rupp, Correction Lieutenant, Department of Corrections (PS6320I)* (MSB, decided October 11, 2000); *In the Matter of Walter Langdon, County Correction Sergeant (PC6549N), Atlantic County* (MSB, decided October 14, 1998). Compare *In the Matter of Albert S. Waddington, County Correction Sergeant (PC0349T), Camden County*, Docket No. A-568-99T2 (App. Div. December 5, 2000) (Removal from County Correction Sergeant promotional list upheld for County Correction Officer with a lengthy list of counseling reports, poor evaluations, reprimands, minor disciplinary sanctions and two major disciplinary actions over approximately 13 years). As such, the appellant's disciplinary history, including the 45 working day suspension, is sufficient to bypass her name on the subject certification, especially when there is no evidence that the lower ranked candidates had any disciplinary records.

With respect to the appellant's argument that she was subjected to discrimination and retaliation, she has not established her claims. Initially, the record reflects that the Deputy Director, Hudson County Department of Family Services/Welfare Division initially recommended the appellant for a position as a Clerk, Bilingual in Spanish in English, by letter in 2008. As such, prior to when the appellant was disciplined in 2015, the record reflects that the appointing authority was willing to hire the appellant. Although the appellant was later disciplined and, as a result, not selected for the subject position for the reasons noted above, the appointing authority would likely not have written a letter of recommendation for her in 2008 had it not been interested in her future advancement prior to her disciplinary incidents. Based on that information, the appellant has not established that she was subject to discrimination or retaliation.³ As such, the record does not

³ It is noted that the appellant did not specify under what protected category she was claiming such discrimination or retaliation.

reflect any substantive evidence to show that the appellant's non-selection was improper.

Finally, while it appears that the appellant is also arguing that she was not selected from the PL151410 certification, there is no evidence that she appealed her non-selection from that certification to this agency for review. As such, she cannot now appeal that matter within the context of this appeal.

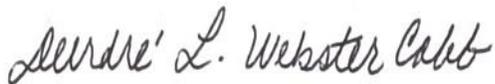
Accordingly, the appellant has not sustained her burden of proof in this matter.

ORDER

Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 21st DAY OF NOVEMBER, 2018



Deirdre Webster Cobb
Chairperson
Civil Service Commission

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c: Claudia Nina
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